

Applicant respectfully traverses the rejection and submits that Claims 1 and 5-9 are not obvious over Burns.

Burns discloses a collection assembly with a bottom edge 47 that is not rounded (as shown in Fig. 1) for allowing the container to be placed upright on a flat surface. Burns further discloses that an extension be added to Burns to make it compatible with instrumentation.

The present invention as recited in amended Claim 1 is a once piece collection container assembly comprising a solid partition and a second end comprising a false bottom end which comprises a rounded open bottom end extending from an arcuate shoulder. The present invention is a one piece collection container that is compatible with clinical equipment and does not require any additional apparatus or extensions to be compatible with clinical equipment.

Applicant further submits that in clinical use, it is desirable for specimen collection containers to have rounded bottom configurations that closely simulate a standard-sized blood collection tube configuration instead of planar bottoms. Rounded bottom configurations facilitate compatibility with clinical equipment and instrumentation. Most notably is that an advantage of the assembly of the present invention is that it provides a full-draw blood collection container assembly having a reduced internal volume but with external dimensions about the same as a standard-sized blood collection container assembly. A further advantage of the assembly of the present invention is that it provides a specimen collection container which is universally compatible with various clinical equipment and instrumentation. In particular, the assembly of the present invention does not require any internal adapters and the like to be attached to the assembly to be compatible with various clinical equipment and instrumentation.

Applicant respectfully submits that Burns does not teach or suggest a false bottom container having a rounded open bottom end extending from an arcuate shoulder. Applicant further submits that a false bottom container having a rounded open bottom end extending from an arcuate shoulder is not a matter of design choice. Applicant respectfully traverses such an assertion by the examiner without proper foundation from a reference in support of the examiner's personal opinion.

Applicant respectfully submits that the present invention is compatible with standard clinical equipment and instruments as compared with the device disclosed in Burns. Burns is not compatible with standard clinical equipment unless modified with an adapter that is secured to the bottom the Burns device.

Applicant respectfully submits that the examiner's theory that the present invention is a matter of engineering design choice amounts to speculation and impermissible hindsight reconstruction of the claimed invention. In re Deuel, 51 F. 3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995).

Applicant further submits that the arcuate shape of the false bottom of the present invention should be evaluated in terms of the whole invention. Applicant submits that such evaluation includes whether the prior art provides any teaching or suggestion to one of ordinary skill in the art to make the arcuate shape to produce the present invention. In re Gordon, 733 F. 2d 900, 221 USPQ 1125 (Fed. Cir. 1984), In re Chu, 66 F. 3d 292, 36 USPQ2d 1089 (Fed. Cir. 1995).

Applicant further submits that the examiner's remarks that it would be obvious to provide Burns with a rounded bottom end must be supported by published documents for applicant's consideration. Applicant further submits that the arcuate shoulder is not suggested or taught in Burns.

Applicant respectfully requests reconsideration and withdrawal of the rejection.

CONCLUSION

Allowance of this application is courteously urged.

Respectfully submitted,

Dated: April 2, 2001

By: Nanette S. Thomas
Nanette S. Thomas
Attorney for Applicant
Reg. No. 33,310

Becton, Dickinson and Company
1 Becton Drive
Franklin Lakes, NJ 07417-1880
(201) 847-7049

| | |
|--|-------------------------|
| I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231 ON: <u>April 2, 2001</u> | |
| BY: SUSAN R. WAGNER <u>Susan R. Wagner</u> (SIGNATURE) | <u>4/2/01</u> (DATE) |

Doc. No. 41375